

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of TCP Acquisition, Inc. for a Certificate of Public Convenience and Necessity to Offer InterLATA and IntraLATA Interexchange and Limited Facilities-Based and Resold Local Exchange Telecommunications Service to the Public in the State of California.

Application 01-06-049
(Filed June 26, 2001
Amended August 20, 2001)

O P I N I O N**I. Summary**

TCP Acquisition, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide limited facilities-based and resold local exchange, and interexchange telecommunications services. In addition, Applicant and the Chapter 11 trustee (Trustee) of Telscape International, Inc. (Telscape) request approval of a transaction whereby Applicant will acquire certain assets of Telscape. By this decision, we grant the authority requested subject to the terms and conditions set forth below.

II. Background

By Decision (D.) 94-09-065 and prior decisions we authorized the provision of competitive interLATA and intraLATA interexchange services by carriers meeting specified criteria.¹

In D.95-07-054 and D.95-12-056, we authorized the provision of competitive local exchange service, by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific) and Verizon California Inc. (Verizon). Applicants who are granted authority to provide competitive local exchange service must comply with various rules, including: (1) the consumer protection rules set forth in Appendix B of D.95-07-054; (2) the rules for local exchange competition set forth in Appendix C of D.95-12-056; and (3) the customer notification and education rules adopted in D.96-04-049.

By D.97-09-115, we extended coverage of our adopted rules for local exchange competition to the service territories of Roseville Telephone Company (RTC) and, Citizens Telephone Company of California, Inc. (CTC).

III. Overview of Application

Applicant filed its application on June 26, 2001, and filed an amendment to its application on August 20, 2001. The application, as amended, was filed under Pub. Util. Code §§ 851-854(a). There were no protests to the application or the amendment. Applicant seeks authority to provide limited facilities-based and

¹ California is divided into 10 Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

resold interexchange service as a nondominant interexchange carrier (NDIEC), and local exchange service as a competitive local carrier (CLC) throughout Pacific, Verizon, RTC and CTC's service territories. In addition, Applicant and Trustee request approval of a transaction whereby Applicant will acquire certain assets of Telscape.

Telscape has three wholly-owned subsidiaries which have been authorized to provide service in California. Together they serve approximately 31,000, primarily Hispanic, residential customers in California. They are as follows:

- MSN Communications (U-5738-C) which is authorized to provide resold interexchange service.
- Telscape USA, Inc. (U-5748-C) which is authorized to provide resold interexchange service.
- Pointe Local Exchange Company (U-6185-C) which is authorized to provide limited facilities-based and resold local exchange and interexchange service.

Assets of all three of these affiliates will be acquired by Applicant. The assets include real property, equipment, contracts, leases, intellectual property, assured liabilities, and the customer bases.

Applicant is a Delaware corporation with its principal place of business at 177 Broad Street, 12th floor, Stamford, Connecticut 06901. Telscape is a Texas Corporation with its principal place of business at 1325 Northmeadow Parkway, Suite 110, Roswell, Georgia 30076.

IV. Procedural Matters

In Resolution ALJ 176-3067 dated July 12, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received.

There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

V. Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

VI. Financial Qualifications of Applicant

To be granted a CPCN, an applicant for authority to provide facilities-based and resold local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses.² An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.³ Applicant provided a letter from its bank that demonstrates that it has sufficient cash to satisfy the financial requirement.

We find that Applicant has met our requirement that it possesses sufficient financial resources to fund its operations.

² The financial requirement for CLCs is contained in D.95-12-056, Appendix C. The financial requirement for NDIECs is contained in D.91-10-041.

³ The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

VII. Technical Qualifications of Applicant

Applicants for NDIEC and CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its management that demonstrates that it possesses sufficient experience and knowledge to operate as a telecommunications provider.

Applicant represents that no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with any telecommunications carrier that filed for bankruptcy or went out of business, or was sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, except that some of Applicant's managers held positions with Telscape, which has filed for bankruptcy protection.

We find that Applicant is technically qualified to operate as a CLC and NDIEC.

VIII. Tariffs

Commission staff reviewed Applicant's draft CLC tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment B to this decision. Applicant shall correct these deficiencies in its tariff compliance filing as a condition of our approval of its tariffs.

Applicant requests exemption from the IEC tariff filing requirements, and agrees to abide by the Commission's consumer protection rules adopted in D.98-08-031. Therefore, we will grant the exemption.

IX. California Environmental Quality Act (CEQA)

CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant represents that it will not be constructing any facilities, other than equipment to be installed in existing buildings or structures, for the purpose of providing local exchange or interexchange services. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment. Applicant must file for additional authority, and submit to any required CEQA review, before it can construct facilities other than equipment to be installed in existing buildings or structures.

X. The Acquisition

Telscape is a holding company. It has three subsidiaries authorized to provide telecommunications service in California as discussed above. Telscape ran out of money and was unable to attract the needed capital. As a result, it filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court (Court) for the District of Delaware on April 27, 2001. On July 10, 2001, Trustee conducted an auction of Telscape's assets. Applicant's bid was accepted. On August 8, 2001, the Court issued an order approving the sale of Telscape's assets to Applicant.

Applicant intends to commence operations as soon as this application is approved. Applicant represents that it does not intend to change the rates or services offered by Telscape's subsidiaries. The only change for the customers will be the change of name of their provider. Applicant also says that the customers will benefit by not having their service disrupted.

In a situation where a company that does not possess a CPCN desires to acquire a company that does possess a CPCN, we will apply the requirements that apply to an applicant seeking the authority held by the acquired company to the acquiring company. As discussed above, Applicant meets the requirements for a CPCN to provide limited facilities-based and resold local exchange and

interexchange service. Therefore, Applicant is qualified to acquire the assets of Telscape.

XI. Notice

The notice requirements for transfers of a carrier's customer base were developed in D.97-06-096 for advice letter filings. The requirements are useful as a guide in this proceeding. They are as follows:

1. The notice must be in writing;
2. The carrier must provide it to customers no later than 30 days before the proposed transfer;
3. The notice must contain a straightforward description of the upcoming transfer, any fees the customer will be expected to pay, a statement of the customer's right to switch to another carrier, and a toll-free number for questions; and
4. The notice and the carrier's description of service to customers must be included in the advice letter.

On September 21 and 22, 2001, Applicant mailed customer notices that satisfied the first and third requirements. The notice was mailed to customers at least 30 days before the transfer will take place in order to satisfy the second requirement. The fourth requirement relates to advice letter filings and, as a result, does not apply. Therefore, we find that Applicant has satisfied the notice requirements.

XII. Conclusion

We conclude that the application conforms to our rules for authority to provide competitive local exchange and interexchange telecommunications services, and for acquisition of the assets of a certificated telecommunications carrier. Since the application ensures that service to customers will not be

interrupted, we find that the acquisition is in the public interest. Accordingly, pursuant to Pub. Util. Code §§ 851-854(a), we shall approve the application subject to the terms and conditions set forth herein.

Findings of Fact

1. Notices of the application and the amendment appeared in the Daily Calendar on July 3, 2001 and August 30, 2001, respectively.
2. No protests have been filed.
3. A hearing is not required.
4. In prior decisions the Commission authorized competition in providing interexchange services for carriers meeting specified criteria.
5. In prior decisions the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, RTC and CTC.
6. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid, and readily available to meet its start-up expenses.
7. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.
8. Applicant possesses sufficient experience and knowledge to provide telecommunications services.
9. Applicant is qualified to and requests an exemption from the IEC tariff filing requirements, and agrees to abide by the Consumer Protection Rules adopted in D.98-08-031.
10. As part of its application, Applicant submitted a draft of its initial local exchange tariff that contained the deficiencies identified in Attachment B to this

decision. Except for those deficiencies, its draft tariffs complied with the Commission's requirements.

11. Exemption from the provisions of Pub. Util. Code §§ 816-830 has been granted to other NDIECs and CLCs. (See, e.g., D.86-10-007, D.88-12-076, D.97-01-015, and D.96-05-060.)

12. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of Pub. Util. § 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044, D.97-01-015, and D.96-05-060.)

13. By D.97-06-017, all interexchange carriers and CLCs are no longer required to comply with General Order 96-A, subsections III.G(1) and (2), and Commission Rules of Practice and Procedure 18(b).

14. Applicant will not be constructing facilities, other than equipment to be installed in existing buildings or structures.

15. On September 21 and 22, 2001, Applicant mailed notices to customers of the proposed transfer of Telscape's customer base to Applicant that satisfied the applicable requirements of D.97-06-096.

16. Approval of the acquisition will ensure that service to customers is not interrupted.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has sufficient technical expertise to operate as a telecommunications carrier.
3. Public convenience and necessity require that Applicant's competitive local exchange and interexchange services be subject to the terms and conditions set forth herein.

4. Applicant is subject to:

- a. The current 1.45% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Pub. Util. Code § 879; Resolution T-16435, December 21, 2000);
- b. The current 0.481% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16504, March 27, 2001);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 2000-2001 fiscal year (Resolution M-4800);
- d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16521 at 0.200%, June 14, 2001);
- e. The current 2.6% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16430, September 21, 2000); and
- f. The current 0.185% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16437, September 21, 2000).

5. Applicant should be exempted from Pub. Util. Code §§ 816-830.

6. Applicant should be exempted from Pub. Util. Code § 851 when the transfer or encumbrance serves to secure debt.

7. Since Applicant will not be constructing any facilities, other than equipment to be installed in existing buildings or structures, it can be seen with certainty that there will be no significant effect on the environment.

8. The application should be granted to the extent set forth below.
9. Applicant should be granted an exemption from the requirement to file interexchange tariffs.
10. Applicant, once granted a CPCN to operate as a CLC, should be subject to the Commission's rules and regulations regarding the operations of CLCs as set forth in D.95-07-054, D.95-12-056, and other Commission decisions.
11. Applicant's initial local exchange tariff filing should correct the deficiencies in its draft tariffs as indicated in Attachment B to this decision.
12. Any CLC that does not comply with our rules for local exchange competition adopted in Rulemaking 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.
13. The joint application of Applicant and Telscape for Applicant to acquire the assets of Telscape is in the public interest, and should be granted.
14. Because of the public interest in competitive local exchange and interexchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The application of TCP Acquisition, Inc. (Applicant), for a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold competitive local exchange services and interexchange services, is granted subject to the terms and conditions set forth below.
2. The joint application of Applicant and Telscape International, Inc. (Telscape) for Applicant to acquire the assets of Telscape is granted pursuant to Pub. Util. Code §§ 851-854(a).

3. The CPCNs of MSN Communications (U-5738-C), Telscape USA, Inc. (U-5748-C), and Pointe Local Exchange Company (U-6185-C) are not acquired by Applicant.

4. Applicant is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company, Verizon California Inc., Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc.

5. Applicant shall file a written acceptance of the certificate granted in this proceeding.

6. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment B corrected. Applicant may not offer local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariff shall be effective not less than 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

7. Applicant is a competitive local carrier (CLC). The effectiveness of its future CLC tariffs is subject to the schedules set forth in Appendix C, Section 4.E of Decision (D.) 95-12-056:

A. "E. CLCs shall be subject to the following tariff and contract-filing, revision and service-pricing standards:

"(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice to the Commission. Customer notification is not required for rate decreases.

- “(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- “(3) Uniform minor rate increases, as defined in D.95-07-054, shall become effective on not less than five (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.
- “(4) Advice letter filing for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice to the Commission.
- “(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.
- “(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.
- “(7) CLCs shall file tariffs in accordance with PU Code Section 876.”

8. Applicant may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(l)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in Conclusion of Law 4.

9. Applicant shall file as part of its initial local exchange tariff, after the effective date of this order and consistent with Ordering Paragraph 5, a service area map.

10. Applicant is exempt from the requirement to file interexchange tariffs.

11. Applicant shall comply with the Commission's consumer protection rules adopted in D.98-08-031, as modified from time to time.

12. Prior to initiating service, Applicant shall provide the Commission's Consumer Services Division with its designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated annually or if the name or telephone number changes.

13. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public within five days after local exchange service begins.

14. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

15. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

16. In the event Applicant's books and records are required for inspection by the Commission or its staff, Applicant shall either produce such records at the Commission's offices or reimburse the Commission for the costs incurred in having its staff travel to Applicant's office.

17. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form contained in Attachment A to this decision.

18. Applicant shall ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

19. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

20. The corporate identification number assigned to Applicant is U-6589-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

21. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

22. Applicant is exempted from the provisions of Pub. Util. Code §§ 816-830.

23. Applicant is exempted from Pub. Util. Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

24. If Applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, the Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes its CPCN unless it has received written permission from the Commission's Telecommunications Division to file or remit late.

25. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/Investigation 95-04-044), the Commission's rules and regulations for NDIECs set forth in D.93-05-010 and D.90-08-032, as well as all other applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

26. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

27. Applicant is not authorized to construct facilities, other than equipment to be installed in existing buildings or structures.

28. This application is closed.

This order is effective today.

Dated _____, at San Francisco, California.

**INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS
AND INTEREXCHANGE CARRIERS**

**TO: ALL COMPETITIVE LOCAL CARRIERS AND INTEREXCHANGE
CARRIERS**

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

ATTACHMENT A

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility.
State if affiliate is:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)**ATTACHMENT B****Page 1**

List of deficiencies filed by TCP Acquisition, Inc. in A. 01-06-049 to be corrected in its tariff compliance filing.

1. Remove the date filed on the bottom right-hand corner of every tariff sheet. Indicate the date filed during the initial tariff filing.

2. Schedule 1-T, Sheet 33: Include the following corrected charge and rates for ULTS:

Establishment	\$9.50
Flat Rate	5.34
Measured Rate	2.85

3. Sheet 47, Rule 2(1): State that the company will also provide residential services.
4. Sheet 48, Rule 3(2): State that blocking service shall be made available free of charge to residential customers, although CLCs may impose a charge if the customer asks for deactivation of blocking. Refer to Rule 15 of Appendix B of D. 95-07-054.
5. Sheet 48, Rule 3: Include the 1st and 2nd paragraph of Rule 2 from Appendix B of D. 95-07-054 in the CLC tariff.
6. Sheet 52, Rule 7(1)B: State that in the event a customer requests services in addition to basic service, the average bill will reflect the aggregate services requested by the customer. Refer to Rule 5 of Appendix B of D. 95-07-054.
7. Sheet 53, Rule 72(A): State that the CLC cannot require advance payments for usage.
8. Sheet 54, Rule 8: Include Rule 6A(2) from Appendix B of D. 95-07-054 in the CLC tariff.

9. Sheet 58, Rule 9(3): State that the late payment date will be displayed prominently on the customer's bill. Refer to Rule 9 of Appendix B of D. 95-07-054.

ATTACHMENT B

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10. Sheet 59, Rule 10: Modify line 4 so that it states "Subscriber's service may be subject to disconnection if the CLC has notified the customer by written notice of such delinquency and impending termination". Refer to Rule 8B of Appendix B of D. 95-07-054. Also include Rule 8E and 8G from Appendix B of D. 95-07-054 in the CLC tariff.
11. Sheet 61, Rule 11: State that Basic Service will not be disconnected for non-payment of anything other than residential and single line business, Flat Rate and/or Measured Rate Service as defined in D. 96-10-066, Appendix B, page 5. Refer to D. 00-03-020.
12. Sheet 64, Rule 15: The CLC must concur with Pacific Bell or Verizon's Limitation of Liability tariffs regarding credit for service interruptions less than 24 hours. Refer to D. 95-12-057.

(END OF ATTACHMENT B)